Meeting of States Parties

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Appointment of Auditor for financial years 2005-2008

1. Pursuant to regulation 12.1 of the Financial Regulations of the International Tribunal for the Law of the Sea:

> The Meeting of States Parties shall appoint an Auditor, which may be an internationally recognized firm of auditors or an Auditor General or an official of a State Party with an equivalent title. The Auditor shall be appointed for a period of four years and its appointment may be renewed. The Tribunal may make proposals regarding the appointment of the Auditor.

2. In order to enable the Tribunal to consider the possibility of making proposals regarding the appointment of Auditor, the Registry sent at the beginning of 2005 a request for quotation (annex I) to five internationally recognized firms of auditors with offices in Germany: BDO Deutsche Warentreuhand, Aktiengesellschaft; Deloitte & Touche; KPMG; Ernst & Young; and PricewaterhouseCoopers. The terms of reference (annex II), which are similar to the terms of reference applied to audit reports for the financial periods 1999 to 2004, were also communicated to those firms. Considering that the Tribunal has no internal audit service, the request for quotation included a provision for an interim audit every two years, i.e., in 2005 and 2007.

3. Four quotations were received by the Registry, as follows:

Audit firm	*Total (including expenses, excluding VAT) 2005-2006*	*Total (including expenses, excluding VAT) 2007-2008*
BDO Deutsche Warentreuhand	€7 000	€7 000
Deloitte & Touche	€13 100	€13 800
Ernst & Young	Not submitted	
KPMG[a]	US$ 14 000	US$ 14 000
PricewaterhouseCoopers	€23 120	€23 900

[a] Estimated price does not include a provision for interim audits.

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4. The Registry evaluated the above quotations, taking into account technical ability to perform the audit in accordance with generally accepted common auditing standard, the interest of the Tribunal and the best value for money.

5. On that basis, the Registry selected the following three quotations, which may be considered as meeting the requirements of the Tribunal:

Audit firm	*Total (including expenses, excluding VAT) 2005-2006*	*Total (including expenses, excluding VAT) 2007-2008*
BDO Deutsche Warentreuhand	€7 000	€7 000
Deloitte & Touche	€13 100	€13 800
PricewaterhouseCoopers	€23 120	€23 900

6. The quotation from KPMG is not recommended since the price in the offer is only an estimate and does not include a provision for an interim audit.

7. The budgetary provision for the 2005-2006 audit totals €32,800 for the financial period (€16,400 provided for in 2005 and €16,400 provided for in 2006).

8. It may be noted that the following Auditors have been previously selected to conduct the audit of the financial statements of the Tribunal:

Financial periods	*Firm*	*Cost*
1996/1997	Arthur Andersen	US$ 13 000
1998	Arthur Andersen	US$ 13 000
1999	Arthur Andersen	US$ 13 000
2000	Arthur Andersen	US$ 13 000
2001	PricewaterhouseCoopers	US$ 13 100
2002	PricewaterhouseCoopers	US$ 13 400
2003	PricewaterhouseCoopers	€14 000
2004	Deloitte & Touche	€9 200

9. The Tribunal, at its Nineteenth Session, examined the quotations and the evaluation done by the Registry and decided to transmit this information to the Meeting of States Parties for its consideration in the event that the Meeting would decide to appoint as Auditor for the financial periods 2005-2006 and 2007-2008 an internationally recognized firm of auditors.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
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SCOPE OF AUDIT

(a) whether the financial statements of the Tribunal present fairly in all material aspects, the financial situation of the International Tribunal for the Law of the Sea;

(b) the Meeting of States Parties, at its fourteenth Meeting (14 – 18 June 2004), by its decision on 16 June 2004 approved and appropriated an amount of €15,506,500 as the Budget for the International Tribunal for the Law of the Sea for the period 1 January 2005 to 31 December 2006 as set out in document SPLOS/117. Kindly review whether the expenses incurred during this financial period are in accordance with the appropriations made by the Meeting of States Parties;

(c) whether expenditures incurred have been appropriately authorized by the party designated for that purpose in the Rules of the Tribunal or the Financial Regulations;

(d) whether staff and persons being paid by the Tribunal have been recruited or engaged in the manner provided for in the Rules of the Tribunal or the Financial Regulations;

(e) whether goods and services have been procured in accordance with the procedure provided for in the Financial Regulations; and

(f) whether goods and services which have been procured are necessary or not excessive, having regard to circumstances and the functions of the Tribunal.

Annex II

Annex to the Financial Regulations

Additional terms of reference governing the audit of the International Tribunal for the Law of the Sea

1. The Auditor shall perform such audit of the accounts of the Tribunal, including all trust funds and special accounts, as it deems necessary in order to satisfy itself:

   (a) That the financial statements are in accord with the books and records of the Tribunal;

   (b) That the financial transactions reflected in the statements have been in accordance with these Regulations and the Financial Rules, the budgetary provisions and other applicable directives;

   (c) That the securities and moneys on deposit and on hand have been verified by certificates received direct from the Tribunal's depositaries or by actual count;

   (d) That the internal controls, including internal oversight, are adequate in the light of the extent of reliance placed thereupon.

2. The Auditor shall be the sole judge as to the acceptance in whole or in part of certifications and representations by the Registrar and may proceed to such detailed examination and verification as it chooses of all financial records, including those relating to supplies and equipment.

3. The Auditor and its staff shall have free access at all convenient times to all books, records and other documentation which are, in the opinion of the Auditor, necessary for the performance of the audit. Information which is classified as privileged and which the Registrar (or a designated senior official) agrees is required by the Auditor for the purposes of the audit and information classified as confidential shall be made available on application. The Auditor and its staff shall respect the privileged and confidential nature of any information so classified which has been made available and shall not make use of it except in direct connection with the performance of the audit. The Auditor may draw the attention of the Tribunal and the Meeting of States Parties to any denial of information classified as privileged which, in its opinion, was required for the purpose of the audit.

4. The Auditor shall have no power to disallow items in the accounts but shall draw the attention of the Registrar, for appropriate action, to any transaction for which it entertains doubt as to legality or propriety. Audit objections, to these or any other transactions, arising during the examination of the accounts shall be communicated immediately to the Registrar.

5. The Auditor (or such of its officers as it may designate) shall express and sign an opinion on the financial statements which shall read as follows:

   "We have examined the following appended financial statements, numbered ... to ..., properly identified, and relevant schedules of the International Tribunal for the Law of the Sea for the financial period ended 31 December .... Our examination included a general review of the accounting procedures and such tests of the accounting records and other supporting evidence as we considered necessary in the circumstances."

The opinion shall also state, as appropriate, whether:

(a) The financial statements present fairly the financial position as at the end of the period and the results of their operations for the period then ended;

(b) The financial statements were prepared in accordance with the stated accounting principles;

(c) The accounting principles were applied on a basis consistent with that of the preceding financial report;

(d) Transactions were in accordance with these Regulations and legislative authority.

6. The report of the Auditor on the financial operations of the Tribunal for the financial period shall be submitted to the Meeting of States Parties through the Tribunal. It shall indicate:

(a) The type and scope of the Auditor's examination;

(b) Matters affecting the completeness and accuracy of the accounts, including, where appropriate:

(i) Information necessary to the correct interpretation of the accounts;

(ii) Any amounts which ought to have been received but which have not been brought to account;

(iii) Any amounts for which a legal or contingent obligation exists and which have not been recorded or reflected in the financial statements;

(iv) Expenditures not properly substantiated;

(v) Whether proper books of accounts have been kept where in the presentation of statements there are deviations of a material nature from the generally accepted accounting principles applied on a consistent basis, these should be disclosed;

(c) Other matters which the Auditor considers should be brought to the notice of the Meeting of States Parties, such as:

(i) Cases of fraud or presumptive fraud;

(ii) Wasteful or improper expenditure of the Tribunal's money or other assets, notwithstanding that the accounting for the transaction may be correct;

(iii) Expenditure likely to commit the Tribunal to further outlay on a large scale;

(iv) Any defect in the general system or detailed regulations governing the control of receipts and disbursements or of supplies and equipment;

(v) Expenditure not in accordance with the intention of the Meeting of States Parties after making allowance for duly authorized transfers within the budget;

(vi) Expenditure in excess of appropriations as amended by duly authorized transfers within the budget;

(vii) Expenditure not in conformity with the authority which governs it;

(d) The accuracy or otherwise of the supplies and equipment records as determined by stock-taking and examination of the reports;

(e) If appropriate, transactions accounted for in a previous period concerning which further information has been obtained or transactions in a later period concerning which it seems desirable that the Meeting of States Parties should have early knowledge.

7. The Auditor may make such observations with respect to its findings resulting from the audit and such comments on the Registrar's financial report as it deems appropriate to the Meeting of States Parties, the Tribunal or the Registrar.

8. Whenever the scope of audit of the Auditor is restricted, or whenever it is unable to obtain sufficient evidence, it shall refer to the matter in its opinion and report, making clear in the report the reasons for its comments and the effect on the financial position and the financial transactions as recorded.

9. In no case shall the Auditor include criticism in its report without first affording the Registrar an adequate opportunity of explanation on the matter under observation.

10. The Auditor shall not be required to mention any matter referred to in the foregoing that, in its opinion, is insignificant in all respects.